

No. 6186-4Lab-76/33215.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s Usha Forgings and Stampings Limited, 13/1, Mathura Road, Faridabad :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 51 of 1974

between

SHRI NARAIN SINGH, WORKMAN AND THE MANAGEMENT OF M/S USHA FORGINGS AND STAMPINGS LIMITED, 13/1, MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/74/10118-22, dated 18th April, 1974, of the Governor of Haryana, the following dispute between the management of M/s Usha Forgings and Stampings Limited, Faridabad and its workman Shri Narain Singh, was referred to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1937 :—

“Whether the termination of services of Shri Narain Singh was justified and in order? If not, to what relief is he entitled?”

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings giving rise to the following issues framed,—*vide* order, dated 26th February, 1975 :

- (1) Whether Shri Narain Singh, workman concerned, had tendered his resignation on 4th November, 1974 and received his dues in full and final settlement of his entire claim against the management?
- (2) Whether the termination of services of Shri Narain Singh was justified and in order? If not, to what relief is he entitled?

The parties being present before me on 6th October, 1975, were directed to appear on 2nd December, 1975, when the workman absented himself and continued to do so on different hearings till 11th June, 1976, when neither party was present.

It would, thus, appear that the workman was not interested in pursuing the demand initially raised by him on the management leading to the reference and there is now no dispute between the parties requiring adjudication.

I hold accordingly and answer the reference while returning the award in terms of the findings arrived at by me.

Dated the 17th June, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 703, dated the 19th June, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 19th June, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4981-4Lab-76/33217.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the Management of M/s The British Machinery Supplies Co., Industrial Area, Faridabad :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 75 of 1970

between

SARVSHRI HARDIAL SINGH, JHANDA SINGH, HARI CHAND AND RAJPAL SHARMA, WORKMEN AND THE MANAGEMENT OF M/S THE BRITISH MACHINERY SUPPLIES CO., INDUSTRIAL AREA, FARIDABAD.

AWARD

By order No. ID/4408-12, dated 5th February, 1969, the Governor of Haryana, referred the following dispute between the management of M/s The British Machinery Supplies Co., Industrial Area, Faridabad and its workmen Sarvshri Hardial Singh, Jhanda Singh, Hari Chand and Rajpal Sharma, to this Labour Court for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Sarvshri Hardial Singh, Jhanda Singh, Hari Chand and Rajpal Sharma was justified and in order ? If not, to what relief are they entitled ?

The parties put in their appearance in this court in response to the usual notice of reference sent to them and filed their pleadings giving rise to the following issues framed,—*vide* order, dated 16th April, 1975:—

- (1) Whether the factory has been closed, if so, since when and with what effect ? (On management).
- (2) Whether Sarvshri Hardial Singh, Jhanda Singh, Hari Chand and Rajpal, workmen concerned, had tendered their resignation and the same has been duly accepted by the management ?
- (3) Whether the termination of services of Sarvshri Hardial Singh, Jhanda Singh, Hari Chand and Rajpal Sharma was justified and in order, If not, to what relief are they entitled ?

The case was at the stage of recording the evidence of the workmen after the management had closed their evidence on the aforesaid issues, when Shri Darshan Singh, authorised representative for the workmen, made a statement on 12th May, 1976, withdrawing the demand leading to the reference.

It would, thus, appear from the statement of Shri Darshan Singh that the workmen concerned do not propose to pursue the demand leading to the reference and that there is now no dispute between the parties requiring adjudication.

I, accordingly, answer the reference while returning the award with these findings.

Dated the 14th May, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endst. No. 1218, dated the 17th May, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 2nd/6th December, 1976

No. 12093-4Lab-76/33008.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Krishna Bobin Factory, Bhiwani:—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 83 of 1975

between

SHRI JAI NARAIN, S/O SHRI RAJA RAM WORKMAN AND THE MANAGEMENT OF M/S
KRISHNA BOBIN FACTORY, BHIWANI

AWARD

This Award shall dispose of this reference as also reference No. 84 of 1974 between Shri Jai Narain, son of Shri Ratti Ram and M/s Krishna Bobin Factory, Bhiwani, both consolidated together,—*vide* my order dated 10th September, 1976, on the ground that common questions of facts and law were involved therein.

The Governor of Haryana referred the following dispute for adjudication by this Court in exercise of the powers vesting in him,—*vide* clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, in each reference,—*vide* order, dated 5th August, 1975 :—

Whether the termination of services of Shri Jai Narain, son of Raja Ram/Shri Jai Narain, son of Ratti Ram was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in each case, in response to usual notices of reference sent to them and filed their pleadings giving rise to the following issues:—

- (1) Whether the workman absented himself from duty with effect from 7th March, 1975, voluntarily and did not resume his duties thereafter ?
- (2) Whether demand notice is not signed by the applicant and is otherwise vague ? If yes, to what effect ?
- (3) In case of non-proof of issue No. 1, whether the termination of services of the workman was in order and justified ? If not, to what relief is he entitled ?

The management in order to prove their case, examined Shri Rajinder Singh, their workman and Shri Rajinder Sharma, one of the partner and Manager. Shri Rajinder Singh, M.W.1, deposed that he had been in service of the management and that duty cards were issued to every workman by the management and the attendance of each workman was noted in his duty card. Shri Rajinder Sharma, M.W.2, gave out with reference to the register of attendance of the employee of the management for the period from February, 1974 to March, 1975, brought by him in Court, that each one of the workman concerned absented himself from duty with effect from 7th March, 1975, and continued to do so till 15th March, 1975, whereafter his name was struck off the rolls as a result of his continued absence and that the entries relating to his absence in the attendance register, were in his handwriting and correct. He brought on record the copies of the notices, Ex. M-1 and M-2, affixed by the management on the Notice Board directing the workmen absent from duty to resume duty and letter M-3 and M-4 sent to each workman concerned by ordinary post informing him of his absence and directing him to resume his duties and telling him that in case of his failure to do so necessary legal steps would be taken against him.

None of the workmen concerned appeared before me on 4th November, 1976, despite being directed to do so and adduce his evidence in rebuttal with the result that *ex parte* proceedings were terms against him on that date.

I see no reasons to disbelieve the statement of Shri Rajinder Sharma, Manager and partner of the management concerned, particularly when his evidence is found corroborated by documents referred to above and the proceedings against the workman concerned are *ex parte* and he has not taken care to rebut the evidence of the management and pursue the demand raised by him on them leading to this reference.

I accordingly relying on the un rebutted statement of Shri Rajinder Sharma and the documents produced by him hold that each workman absented himself from duty with effect from 7th March, 1975, continued to do so till 15th March, 1975 and his name was struck off the rolls on the ground of his long continuous absence and that it is not a case of termination of his services by the management and that he is under the circumstances not entitled to any relief. I under the circumstances do not deem it necessary to give any findings on Issue No. 2. I, therefore, answer the reference while returning the Award in these terms.

Dated the 17th November, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 2593, dated the 20th November, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9482-4Lab-76/33012.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Prestolite of India Limited, Mathura Road, Faridabad :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 25 of 1975
between

THE WORKMEN AND THE MANAGEMENT OF M/S PRESTOLITE OF INDIA LIMITED,
MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/74/1196/282226, dated 20th January, 1975, the Governor of Haryana, referred the following dispute between the management of M/s Prestolite of India Limited, Mathura Road, Faridabad and its

workmen to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :

- (1) Whether the workmen are entitled to the payment of bonus for the year 1973-74 ? If so, with what details ?
- (2) Whether the workmen are entitled to the grant of dearness allowance ? If so, with what details ?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

The workmen alleged in conformity with their notice of demands, dated 5th September, 1974 served by them on the management that they were entitled to bonus at the rate of 20 per cent of their annual wages for the year 1973-74 and increase of the dearness allowance. The management while denying these allegations pleaded, *vide* written statement filed by them that the representative of the union of the workmen settled all their demands, *vide* settlement, dated 11th November, 1974 whereby they agreed to receive the bonus for the year 1973-74 at the rate of Rs. 8.33 per cent of their annual wages and *ex gratia* payment of 1.67 per cent of their wages in full and final settlement of all their demands, and that they had been actually drawing the benefits under the settlement since 11th November, 1974. They further stated that the workmen withdrew the demands relating to the grant of dearness allowance and the same had already been settled, *vide* settlement, dated 18th July, 1973.

The workmen controverted the plea of the management and remained contented merely by stating, *vide* rejoinder filed by them in respect of the settlement relied on by the management that there was no settlement which debarred them from demanding more bonus and dearness allowance. Shri Amar Singh, General Secretary of Prestolite Workers Union in his capacity as authorised representative of the workmen otherwise admitted the signatures of the six office-bearers of the union on settlement copy Ex. M-1, dated 11th November, 1974 and signature of four office-bearers of union on settlement, dated 18th July, 1973 copy Ex. M-2.

The following preliminary issue was thus framed by me, *vide* my order, dated 6th October, 1975:—

Whether the reference in respect of the dispute as referred to this Tribunal is not barred under settlement admitted to have executed by the signatories thereof ?

The workmen in order to prove this issue examined Shri Kundan Lal a member of the executive of the union and admittedly a signatory of settlement copy Ex. M-1 who merely deposed that he was made to sign the settlement without his knowing the contents. The workmen led no other evidence in support of the issue stated above. Shri B.S. Sahni, Plant Manager of M/s Prestolite of India examined as M.W. 1 on the other hand deposed that the settlement Ex. M-1 was signed by him and the representatives of the workmen after their fully understanding and ascertaining the terms and conditions thereof. Shri O.P. Malhotra, Factory Manager examined as M.W. 2 gave out that the settlement copy Ex. M-2, dated 18th July, 1973 was signed by him and the representative of the workmen after fully understanding the contents thereof and that the workmen were actually deriving benefits under settlements copies Ex. M-1 and M-2 since the date of their execution. Nothing could be brought in cross-examination of any of these witnesses justifying rejection of their evidence as false. I therefore in absence of any evidence worth the name for the workmen in support of the issues and in view of the trustworthy evidence of Shri B. S. Sahni and O.P. Malhotra hold the settlement Ex. M-1 and M-2 as having been duly executed by the workmen through their representative.

Faced with the difficulties of want of evidence on record in support of issue No. 1 on behalf of the workmen Shri Madhu Sudan Saran Cowshish contended that the settlement Ex. M-1 was not legal on the ground of failure of the parties concerned to send its copy to Secretary to Government, Haryana and Labour Commissioner, Haryana, in accordance with the provisions of Rule 58 of the rules framed by the Haryana Government and that it could not thus be said to be a settlement either under section 12(3) or under section 18(1) of the Industrial Disputes Act (hereinafter referred to as the Act). I have given this matter of my careful consideration and consider it proper to reproduce the relevant provisions of section 18(1) of the Act as under :—

“Section 18. Persons on whom settlements and awards are binding :

A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.”

The settlement Ex. M-1 and M-2 are admittedly not under section 12(3) of the Act. Settlement under section 18(1) in view of the provisions stated above is always between a workman in his individual capacity and the management and does not comprise the settlement made between the workmen generally and the management. I am thus convinced that the settlements relied on by the management are neither under section 12(3) of the Act made before the Conciliation Officer nor under section 18(1) of the Act.

This is however not all and the question certainly presents some difficulty. There is however no warrant for holding that the definition of settlement as stated under section 12(3) or 18(1) of the Act is exhaustive of all the settlements which can be entered into between the parties. There may for instance be settlement between the parties after the reference is made and the parties can get it recorded directly before the Industrial Tribunal. The

workmen may again propose to withdraw or amend the demand served by them on the management either directly, *vide* a written document or by absenting themselves in the court. These are thus some of the instances of settlements other than envisaged by section 18(1) or 12(3) of the Act. A settlement can thus be entered into by the workmen through their representatives with the management otherwise than under section 12(3) of the Act without reference to the Conciliation Officer. The settlement Ex. M-1 and M-2 can not therefore be ignored or held as illegal merely on the ground that these are not in accordance with the provisions of section 12(3) or 18(1) of the Act or rule 58 of the rules framed thereunder. I therefore hold in agreement with the learned authorised representative for the management that the settlement Ex. M-1 relied on by them is lawful and well enforceable and the contention of the authorised representative for the workman that it is illegal on the ground of the failure of the management to send its copies to the Secretary to the Government of Haryana or the Labour Commissioner, Haryana, in accordance with the provisions of rule 58 has no merit.

In the result I decide the issues stated above against the workmen and answer the reference while returning the award in terms of the settlement Ex. M-1 with the finding that the dispute as referred to this Court does not require further adjudication.

Dated, the 8th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endst. No. 1018, dated the 8th September, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 8th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Settlement under section 18(1) of the Industrial Disputes Act, 1947 between the management of Prestolite of India Limited, Faridabad and the Prestolite Workers' Union Regd., Faridabad.

Representing management .. Shri B.S. Sahni, Administrative Manager of the Company.

Representing workmen .. Shri Jagan Nath, .. President
Shri Parmanand Ram .. Vice President
Shri Kundan Lal .. General Secretary
Shri J.S. Dhaliwal .. Propaganda Secretary
Shri Jai Ram .. Office Secretary
Shri T.N. Malhotra .. Treasurer
of Prestolite Workers' Union Reg. Faridabad.

Short recital of the case

The Prestolite Workers' Union Regd. served upon the management a Demand Notice, dated 5th September, 1974, regarding bonus for the year 1973-74, D.A. and Cost Index Numbers. The matter in dispute has been discussed between the management and the Union in various meetings. In the said meetings, the financial problems being faced by the management have been discussed at length. The representatives of the Prestolite Workers' Union Regd. have appreciated the financial difficulties being faced by the management and consequently the following settlement has been arrived at between the management and the Union :

Terms of Settlement

1. *Bonus for the financial year 1973-74 (from 1-4-73 to 31-3-74)*—(i) That the bonus for the financial year 1973-74 (from 1st April, 1973 to 31st March, 1974) will be paid to the workers/employees at Rs 8.33 per cent of the wages/salaries earned by them during the above year, as provided under the Payment of Bonus Act, 1965.

(ii) That the workers/employees, who are entitled to bonus for the financial year 1973-74 and are continuing in the services of the company till the date of Settlement of bonus as settled above, will also be paid an *ex-gratia* payment at 1.67 per cent of the wages/salaries earned by them during the financial year 1973-74. In other words, the payment of this *ex-gratia* payment will be made only to the workers/employees, who are entitled to bonus and remain in the muster rolls of the company, till the date of Settlement of bonus.

(iii) That the payments as settled above, will be made to the workers-employees on or before 30th November, 1974.

2. *Dearness Allowance and Cost Index Numbers*.—(i) That the demand enlisted on serial No. 2 of the Demand Notice, dated 5th September, 1974 stands withdrawn by the Prestolite Workers' Union Regd. as the demand of Dearness Allowance and Cost Index Numbers, has already been settled, *vide* Settlement, dated 18th July, 1973 arrived at between the Prestolite Workers' Union Regd. and the management.

(ii) That the Prestolite Workers' Union Regd. has agreed that they will not raise any demand having financial repercussions on the management, except bonus till 31st March, 1976, as per terms and conditions of earlier Settlement, dated 18th July, 1973.

The parties sign this Settlement in token of their having accepted the terms and conditions incorporated above, on this 11th day of November, 1974, in presence of the witnesses :

Signatures of the representatives of the workers :

Sd JAGAN NATH
(Sd.) PARMANAND RAM
(Sd.) KUNDAN LAL
(Sd.) J.S. DHALIWAL
(Sd.) JAI RAM
(Sd.) TARLOK NATH MALHOTRA

Signatures of the representative of the management :

(Sd) B.S. SAHNI

Witnesses

(Sd) Sd
(Sd) Sd

SLAL

ATTESTED :

MOHAL LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 2nd/6th December, 1976

No. 12094-41.ab-76 33017. In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, in respect of the Labour Court, Rohtak, dispute between the workmen and the Management of M's Hindustan Machine Tools Limited, Pinjore.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 49 of 1971

between

SHRI RAMJI DASS, WORKMAN AND THE MANAGEMENT OF M'S HINDUSTAN MACHINE
TOOLS LIMITED, PINJORE

AWARD

By order No. ID/UMB 177B-70/14936- 40, dated 15th May, 1971 of the Governor of Haryana, the following dispute between the management of M's. Hindustan Machine Tools Limited, Pinjore and its workman Shri Ram ji Dass, was referred to this court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

" Whether the termination of Services of Shri Ramji Dass was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this court in response to the usual notices of reference sent to them and filed their pleadings

Whereas the workman alleged in the notice of demand served by him on the management that his resignation was obtained by the management under duress and threat and that the same was illegally accepted after he had withdrawn the same, the management denied these allegations and gave out that the charges framed against him in respect of his having committed theft of paint, etc., from the factory had been dropped after he had submitted his resignation and which had been duly accepted by them. The following issues were thus framed on pleas of the parties:—

1. Whether the workman Shri Ram ji Dass voluntarily resigned his service ?

2. Whether the termination of services of Shri Ramji Dass was justified and in order ? If not, to what relief is he entitled ?

Shri O. P. Sharma the then Presiding Officer, Labour Court, Haryana, Rohtak,—*vide* his award, dated 18th July, 1973, decided issue No. 1 in favour of the management and held as a result of this finding that the workman was not entitled to any other relief.

On a writ petition being filed by the workman against the Award, dated 18th July, 1973 referred to above, the Hon'ble the High Court accepted the same and while setting aside the findings of the Labour Court on issue No. 1, quashed the Award and remanded the case for a fresh decision in accordance with law.

The parties relied upon the evidence adduced by them before the Presiding Officer, Labour Court and made statements that they did not propose to adduce fresh evidence after the remand of the case.

I have heard Shri Bhagirath Dass learned authorised representative of the management and the workman. The admitted facts of the case are that the applicant was alleged to have committed theft of paint, thinner, one mild steel strip and some putty and caught red handed on 21st November, 1969 at 14-00 hours while carrying the same from the premises of the factory to his house. He submitted his resignation, dated 21st November, 1969 Ex.M-1 the same day. He was served with a charge sheet Ex. NW-2/2, dated 27th November, 1969 and directed to submit his explanation. He withdrew his resignation,—*vide* letters, dated 11th February, 1970, Ex. WW-2/11, 3rd February 1970, Ex. WW-2, 4th December 1969, Ex. WW-2/3 and 11th December, 1969 Ex. 1, WW-2/8 sent by him to the management,—*vide* registered post. The management conveyed the acceptance of the resignation to the workman on 28th February, 1970,—*vide* their letter, dated 25th March, 1970 Ex. WW-2/14. The findings of the Presiding Officer Labour Court that there was no evidence on record of the withdrawal of the resignation before 25th March, 1970, were held to be perfunctory by the Hon'ble High Court,—*vide* their Judgment, dated 15th October, 1975 in view of the letter of the withdrawal of the resignation being of the dates prior to 25th March, 1970 and the finding of the Labour Court on issue No. 1 were set aside.

This finding is not contested before me by the management and they fairly conceded that the acceptance of the resignation of the workman after its withdrawal by him was illegal. They however relied on the evidence relating to the actual commission of misconduct of theft by the workman rendering him liable to dismissal even when no enquiry was admittedly held against him and the charge sheet served on him was withdrawn and no orders terminating his services on the ground of commission of misconduct were made.

The only question requiring determination under the circumstances would be as to how far the management can legally rely on the evidence of misconduct of the workman when they admittedly did not terminate his services on that ground and remained contented by just accepting his resignation which was illegal.

The management in this connection relied on authorities reported as 1965 II LJ 162 and 1973 I LLJ 278 in support of their contention that the termination of services of the workman on charges of misconduct could be established in the Labour Court even if no such order were actually made by them prior to the reference. I have carefully read each one of these authorities and find the argument unsubstantiated as would appear from the following observation of their lordships made in each case, with particular reference to the portions underlined which on the other hand the case of the workman that the evidence of misconduct could not be relied upon when no order of termination of his services were made on that ground.

1965 II LLJ 162 between workman of Motipur Sugar Factory (Private) Limited and Motipur Sugar Factory (Private) Limited.

It is now well-settled that where an employer had failed to make an enquiry *before dismissing or discharging* a workman it is open to him to *justify to action* before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in case where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.

1973 I LLJ 278 between the workman of M/s. Firestone Tyre & Rubber Co. of India and the management and others.

Even if no enquiry has been held by an employer or if the enquiry held by him as found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the orders, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time *justifying his action*; and it is open to the employee to adduce evidence centre.

The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of *dismissal or discharge* is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the *misconduct alleged is proved*. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in *justification of the action* taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employees, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to *justify his action*, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

The contention of Shri Bhagirath Dass that the whole matter was at large before the Tribunal and the management were legally entitled to establish misconduct of the workman justifying termination of his services has no merit, inasmuch as the matter at large before the Tribunal is only in respect of the order of dismissal or discharge or termination of services, if made by the management and not otherwise.

I thus hold that the acceptance of the resignation of the workman being admittedly illegal and no orders of termination of his services being made on that ground of misconduct the management cannot rely upon the evidence of misconduct for justifying his permission and the question of deciding issue No. 2 does not arise and the workman is entitled to be reinstated with continuity of service. I hold accordingly.

Dated the 12th November, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 2594, dated the 20th November, 1976.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

P. P. CAPRIHAN,
Commissioner and Secretary to Government,
Haryana, Labour and Employment Department